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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09-681,907	06/22/2001	Alfredo J. Teran	1321.28	3508

21901 7590 06-19-2003

SMITH & HOPEN PA  
15950 BAY VISTA DRIVE  
SUITE 220  
CLEARWATER, FL 33760

EXAMINER

LITHGOW, THOMAS M

ART UNIT	PAPER NUMBER
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1724

DATE MAILED: 06/19/2003

124

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/681,907

Applicant(s)

TERAN ET AL.

Examiner

Thomas M. Lithgow

Art Unit

1724

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 02 April 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) none is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☒ Claim(s) 13-15 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: *Thomas M. Lithgow*

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-6 are rejected under 35 U.S.C. 102(b) as being anticipated by Gessler (US 4599166). Gessler includes an ozone system 6,7, a tank with wastewater (1), a recirculating system with redox control 3,8,4. The monitoring of the amount of oxidation of the wastewater in tank 1 is done by sensor 8. Applicant asserts that "wastewater" treated by the present invention is not the same as the "raw water" which Gessler describes as the feed water to his ozone recirculation control system. Applicant's wastewater, as disclosed but not claimed, is derived from a rinse water containing a penetrant dye composition as at least one contaminant. Gessler's raw water is water that is intended to be rendered potable by using the ozone treatment control loop to increase the redox potential of the water in tank 1 above a predetermined redox

potential to reduce the bacteria present in the water. With respect to potable water, any water having a bacteria count too high would be considered a "wastewater" until rendered potable. This is supported by the disclosure of Gessler where it is noted that tank 1 has an over flow drain 27 for excess water which would be essentially untreated water (ie "raw water") and Gessler refers to the water as --wastewater--(col. 2, line 45+). Applicant further refers to lines 9, 25, and 26 in Gessler some how renders the Gessler unable to anticipate claim 1. Applicant states that "Claim 1 of the present invention claims monitoring the amount of oxidation of the wastewater in the tank, and repeating the ...a predetermined level". The examiner agrees that lines 9, 25 and 26 are not part of the recirculation system for keeping the redox potential above a predetermined value. The above first two lines of the rejection identifies the appropriate structure applied against the claims. Further claim 1 is noted to use "comprising" language which is "open" type language- (ie does not exclude the presence of other elements). Applicant asserts that Gessler does not describe "a method for treating wastewater... transferring the penetrant-laden wastewater from the ...tank" etc. Since applicant did not claim such a method Gessler need not disclose it. In regard to the 103 rejection,

applicant did not specifically address the combination but merely revisited the position that Gessler was not correctly applied against claims 1-6.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 7-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gessler (US 4599166) in view of Capehart (US 5547584). As is well known in the water purification art, raw water to be purified can have one or more contaminants requiring removal prior to achieving the desired amount of purification. In the case of Gessler and Capehart, it is their intention to make potable water. In Capehart the raw water is noted to have particulate contaminants which requires a pretreatment with a filter 8, prior to ozonation treatment at 10. To so modify Gessler with such a step would have been obvious if Gessler was faced with a raw liquid stream to be purified which included particulates. This is supported by Gessler at col. 5, lines 17-20.

5. Claims 13-15 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.
6. Applicant's arguments filed 4-2-2003 have been fully considered but they are not persuasive. See the above rejections.
4. 7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thomas M. Lithgow whose

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telephone number is 703-308-0173. The examiner can normally be reached on Mon. -Fri..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Blain Copenhagen can be reached on 703-308-1972. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-3602 for regular communications and 305-3599 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.



Thomas M. Lithgow  
Primary Examiner  
Art Unit 1724

TML  
June 15, 2003